

INITIATIVE 197

I, Ralph Munro, Secretary of State of the State of Washington and custodian of its seal, hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 197 to the Legislature is a true and correct copy as it was received by this office.

INITIATIVE ____

The 1997 Washington State Hemp Initiative

BRIEF TITLE:

AN ACT Relating to regulation and taxation of hemp; amending RCW 69.50.101, 69.50.102, 69.50.201, 69.50.204, 69.50.206, 69.50.401, 69.50.408, 69.50.410, 69.50.414, 69.50.435, 69.50.505, and 69.52.030; adding a new chapter to Title 66 RCW; creating new sections; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

PART 1--DEFINITIONS

NEW SECTION. **Sec. 101.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context requires otherwise.

(1) "Adult" means a person that is twenty-one years of age or older.

(2) "Board" means the Washington state liquor control board, as defined in Title 66 RCW.

(3) "Hemp" means any form of the cannabis plant including, but not limited to, leaves, flowers, stems, stalks, seeds, and resin. Hemp is commonly referred to as "marijuana."

(4) "Industrial hemp" means any hemp or hemp product containing one percent or less THC.

(5) "Intoxicating hemp" means any hemp containing over one percent of the psychoactive chemical compound THC. "Intoxicating hemp" does not include "medicinal hemp."

(6) "Intoxicating hemp establishment" means an establishment with special space and accommodation for sale and consumption of intoxicating hemp or intoxicating hemp products on the premises not in violation of this title.

(7) "Intoxicating and medicinal hemp product" means any hemp product containing over one percent of the psychoactive chemical compound THC.

(8) "Intoxicating and medicinal hemp grower" means a person who grows intoxicating or medicinal hemp for the purpose of selling the hemp not in violation of this title.

(9) "Intoxicating and medicinal hemp manufacturer" means a person who produces intoxicating or medicinal hemp products for the purpose of selling them not in violation of this title.

(10) "Intoxicating and medicinal hemp wholesaler" means a person who buys intoxicating or medicinal hemp or intoxicating or medicinal hemp products from a grower, manufacturer, wholesaler, pharmacy, drug store, state liquor store, intoxicating hemp establishment, or the board for the purposes of selling it to a pharmacy, drug store, wholesaler, manufacturer, state liquor store, intoxicating hemp establishment, or the board, or who represents the wholesaler as agent not in violation of this title.

(11) "Medicinal hemp" means any hemp or hemp product containing over one percent THC that is sold: (a) From a holder of an intoxicating and medicinal hemp grower's, manufacturer's, or wholesaler's license to a drug store or pharmacy; or (b) from a drug store or pharmacy to individuals with a medicinal hemp prescription.

(12) "Medicinal hemp prescription" means a memorandum signed by a physician given by the physician to a patient authorizing the patient to obtain medicinal hemp or medicinal hemp products under this title for medicinal purposes.

(13) "Minor" means a person under twenty-one years of age.

(14) "Package" means a sealed container or receptacle used for holding intoxicating or medicinal hemp or intoxicating or medicinal hemp products.

(15) "Personal use quantity" is the amount of intoxicating hemp that an adult can grow and retain for the adult's own personal use each year without a license.

(16) "Public places" has the same meaning as defined in RCW 66.04.010 and 66.04.011.

(17) "Retail sale" means the sale of intoxicating or medicinal hemp or intoxicating or medicinal hemp products to the general public.

(18) "Sale" means the sale of intoxicating or medicinal hemp or intoxicating or medicinal hemp products to a holder of a grower's, manufacturer's, or wholesaler's license, or to a pharmacy, drug store, state liquor store, the board, or intoxicating hemp establishment.

(19) "Stamp" means the stamp or stamps by use of which the board administers the production tax levy under this chapter.

(20) "THC" means the psychoactive chemical compound THC (the tetrahydrocannabinols) or any of its analogs.

PART 2--ADMINISTRATION

NEW SECTION. **Sec. 201.** **ROLE OF LIQUOR CONTROL BOARD.** (1) The administration of this chapter is vested in the board.

(2) For the purpose of carrying into effect this chapter according to its true intent or of supplying any deficiency in this chapter, the board may adopt such rules as are consistent with the spirit of this chapter and as are deemed necessary or advisable.

PART 3--TAXATION AND TAX STAMPS

NEW SECTION. Sec. 301. TAX ON PRODUCTION. (1) There is levied and shall be collected, as provided in this section, a one time tax on production in an amount equal to the rate of twenty dollars per ounce upon intoxicating or medicinal hemp when it is sold or transferred from a grower to a holder of an intoxicating and medicinal hemp grower's, manufacturer's, wholesaler's, or establishment's license, or to pharmacies, drug stores, state liquor stores, or the board.

(2) There is levied and shall be collected, as provided in this section, a tax upon the importation of intoxicating or medicinal hemp or intoxicating or medicinal products in an amount equal to the rate of twenty dollars per packaged ounce.

(3) It is the responsibility of the intoxicating and medicinal hemp grower or importer to pay the tax on production.

(4) In order to enforce collection of the tax levied under this section, the board shall design and have printed stamps of such size and denominations as may be determined by the board and administered in a manner to ensure the tax has been collected.

NEW SECTION. Sec. 302. TAX ON RETAIL SALE OF INTOXICATING HEMP. (1) There is levied and shall be collected as provided in this section, a tax upon each retail sale of intoxicating hemp or intoxicating hemp products at the rate of 19.7 percent of the selling price.

(2) The taxes imposed in this section shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the tax payable in respect to each taxable retail sale under this section.

NEW SECTION. Sec. 303. APPLIED FUNDING. (1) Twenty-five percent of the tax revenues raised under this chapter shall be deposited in the health services account created under RCW 43.72.900.

(2) The balance of the tax revenues raised under this chapter shall be deposited in the state general fund.

PART 4--LICENSING

NEW SECTION. Sec. 401. PERSONAL USE QUANTITY EXEMPTION. An adult may, without a license, cultivate and harvest a personal use quantity of intoxicating hemp that was cultivated without a license and on which taxes need not be paid. Cultivation or harvest of more than a personal use quantity of intoxicating hemp by a person without a license in violation of section 704 of this act is prohibited. This section does not limit the amount of intoxicating or medicinal hemp an adult may purchase and possess not in violation of this title.

NEW SECTION. Sec. 402. INTOXICATING AND MEDICINAL HEMP GROWER LICENSE. (1) There shall be a grower's license to grow intoxicating and medicinal hemp and sell it to holders of intoxicating and medicinal hemp grower's, manufacturer's, wholesaler's, or establishment's licenses, and to pharmacies, drug stores, state liquor stores, and the board.

(2) The annual fee for a grower's license shall be seventy-five dollars.

NEW SECTION. Sec. 403. INTOXICATING AND MEDICINAL HEMP MANUFACTURER LICENSE. (1) There shall be a manufacturer's license to produce intoxicating or medicinal hemp products and sell them to

holders of intoxicating and medicinal hemp grower's, manufacturer's, wholesaler's, or establishment's licenses, and to pharmacies, drug stores, state liquor stores, and the board.

(2) This license also allows the manufacturer to purchase intoxicating or medicinal hemp from licensed intoxicating and medicinal hemp grower's, wholesaler's, or the board.

(3) The annual fee for a manufacturer's license shall be seventy-five dollars.

NEW SECTION. Sec. 404. INTOXICATING AND MEDICINAL HEMP WHOLESALER LICENSE. (1) There shall be a wholesaler's license to buy intoxicating or medicinal hemp or intoxicating or medicinal hemp products and sell them to holders of intoxicating and medicinal hemp grower's, manufacturer's, wholesaler's, or establishment's licenses, and to pharmacies, drug stores, state liquor stores, and the board.

(2) The annual fee for a wholesaler's license shall be five hundred dollars for each distributing unit.

NEW SECTION. Sec. 405. INTOXICATING HEMP ESTABLISHMENT LICENSE. (1) There shall be an intoxicating hemp establishment's license to sell intoxicating hemp to the general public not in violation of this chapter.

(2) A holder of an intoxicating hemp establishment license may buy intoxicating hemp or intoxicating hemp products from holders of an intoxicating and medicinal hemp grower's, manufacturer's, wholesaler's, or establishment's license, state liquor stores, and the board.

(3) It is the responsibility of the intoxicating hemp establishment to collect and provide to the board the tax on retail sale of intoxicating hemp under this chapter.

(4) The annual fee for an intoxicating hemp establishment license shall be two thousand dollars.

(5) The board shall determine all other conditions placed on the issuance of intoxicating hemp establishment licenses including restrictions on location and number of licenses granted according to the same restrictions placed on class H liquor licenses in RCW 66.24.420.

PART 5--MINORS

NEW SECTION. Sec. 501. MINORS' RESTRICTIONS TO INTOXICATING HEMP. A minor may not use, possess, purchase, or attempt to purchase intoxicating hemp or intoxicating hemp products.

NEW SECTION. Sec. 502. MINORS' RESTRICTIONS TO MEDICINAL HEMP. A minor may not use, possess, purchase, or attempt to purchase medicinal hemp or medicinal hemp products except a minor who has been prescribed medicinal hemp or medicinal hemp products by a licensed physician.

NEW SECTION. Sec. 503. ACCEPTABLE IDENTIFICATION. If there might be a question of a person's right to purchase intoxicating or medicinal hemp or intoxicating or medicinal hemp products by reason of age, the person must be required to present valid identification as required under chapter 66.20 RCW.

NEW SECTION. Sec. 504. PENALTIES APPLIED TO MINORS. A minor who is convicted of a violation of section 501 or 502 of this act is guilty of a misdemeanor punishable as provided by RCW 9A.20.021.

PART 6--LOCAL OPTION

NEW SECTION. **Sec. 601.** ENACTMENT OF LOCAL REGULATION OPTION. Within any local option unit as defined in RCW 66.40.010, there may be held a separate election upon the question of whether the sale of intoxicating hemp or intoxicating hemp products under an intoxicating hemp establishment license shall be permitted within the unit.

NEW SECTION. **Sec. 602.** ADMINISTRATION OF LOCAL REGULATION OPTION. The conditions and procedure for holding an election and administering the local option under section 601 of this act shall be the same as under chapter 66.40 RCW.

PART 7--MISCELLANEOUS REGULATORY PROVISIONS

NEW SECTION. **Sec. 701.** INDUSTRIAL HEMP REGULATIONS. Industrial hemp shall be regulated as any other nonintoxicating agricultural commodity and shall not be treated as a controlled substance.

NEW SECTION. **Sec. 702.** INTOXICATING HEMP REGULATIONS. The consumption of intoxicating hemp or intoxicating hemp products in public places shall be limited to intoxicating hemp establishments.

(2) The sale or consumption of alcohol is prohibited in intoxicating hemp establishments.

(3) The retail sale of intoxicating hemp or intoxicating hemp products is limited to intoxicating hemp establishments and state liquor stores.

(4) Intoxicating and medicinal hemp must be grown indoors with restrictions on entry. Access by minors is prohibited.

(5) Intoxicating and medicinal hemp plants must be grown out of public view. For greenhouses in public view where intoxicating and medicinal hemp are grown, nontransparent material must be used on the sides and roof.

NEW SECTION. **Sec. 703.** MEDICINAL HEMP REGULATIONS. (1) The retail sale of medicinal hemp or medicinal hemp products is limited to drug stores and pharmacies.

(2) Medicinal hemp and medicinal hemp products are hereby restored to the list of available medicines in Washington state. Licensed physicians shall not be penalized for, nor restricted from, prescribing medicinal hemp or medicinal hemp products for medical purposes to any patient.

NEW SECTION. **Sec. 704.** RESTRICTIONS ON PERSONAL USE QUANTITY. (1) The personal use quantity of intoxicating hemp is twelve ounces or less of intoxicating hemp that is harvested and retained per year per adult.

(2) No more than five intoxicating hemp plants per adult may be growing at any given time.

(3) On harvest of any given personal use quantity hemp plant the owner must set aside the personal use quantity amount to be retained and the rest of the intoxicating hemp portion of the plant must be rendered uningestible and discarded in a responsible manner within two weeks of the date of harvest.

(4) The amount of intoxicating or medicinal hemp or intoxicating or medicinal hemp products possessed by an adult that was purchased not in violation of this title is not limited.

NEW SECTION. Sec. 705. RESTRICTIONS ON ADVERTISING. (1) A person who is in a position to profit from the sale of intoxicating or medicinal hemp or intoxicating or medicinal hemp products may not create, display, perform, or distribute advertising or promotional material for intoxicating or medicinal hemp or intoxicating or medicinal hemp products within the state of Washington, other than:

(a) In medical journals directed to and distributed principally to licensed physicians;

(b) In catalogs directed to and distributed solely to adults;

(c) In magazines directed to and distributed solely to adults;

(d) Package labeling;

(e) Point-of-sale advertising on the premises of sellers of intoxicating or medicinal hemp or intoxicating or medicinal hemp products presented so that it cannot be perceived by minors; and

(f) On the exterior of stores where intoxicating or medicinal hemp or intoxicating or medicinal hemp products are sold, a sign indicating with words only that intoxicating or medicinal hemp or intoxicating or medicinal hemp products are sold in the store, or words to that effect, but not otherwise depicting or promoting intoxicating or medicinal hemp or intoxicating or medicinal hemp products or its use. By local option, a local government may prohibit advertising on the exterior of a store where intoxicating or medicinal hemp or intoxicating or medicinal hemp products are sold.

(2) For the purposes of this section, a "person in a position to profit from the sale of intoxicating or medicinal hemp or intoxicating or medicinal hemp products" is a business enterprise that, for pay or other consideration, cultivates, processes, transports, or sells intoxicating or medicinal hemp or intoxicating or medicinal hemp products, or whose property is used for cultivation, processing, transport, or sale of intoxicating or medicinal hemp or intoxicating or medicinal hemp products, or a beneficial owner of a five percent or greater interest in such an enterprise.

(3) A violation of this section is punishable by a fine of up to five thousand dollars or four times the amount paid to procure the advertising in violation of this section, whichever is greater.

NEW SECTION. Sec. 706. RESTRICTIONS ON OPEN CONTAINERS IN VEHICLES. It is a traffic infraction for a person to have in the person's possession while in a motor vehicle on a public roadway intoxicating hemp or intoxicating hemp products other than in an unopened container unless the intoxicating hemp or intoxicating hemp product is kept in the trunk of the vehicle or in some other area of the vehicle not normally occupied by the driver or passengers if the vehicle does not have a trunk. A utility compartment or glove compartment is deemed to be within the area occupied by the driver and passengers.

PART 8--ENFORCEMENT--PENALTIES

NEW SECTION. Sec. 801. ROLE OF STATE AGENCIES. State agencies shall refrain from enforcing any provision of United States criminal law not consistent with the purposes of this chapter.

NEW SECTION. Sec. 802. FURNISHING INTOXICATING OR MEDICINAL HEMP TO MINORS. (1) It is unlawful for a person to sell, give, or otherwise supply intoxicating hemp or intoxicating hemp products to a minor.

(2) It is unlawful for a person to sell, give, or otherwise supply medicinal hemp or medicinal hemp products to a minor who is not in possession of a medicinal hemp prescription.

NEW SECTION. **Sec. 803.** PENALTIES FOR FURNISHING INTOXICATING OR MEDICINAL HEMP TO MINORS. A person guilty of a violation of section 802 of this act is liable, on conviction: For a first offense, for a penalty of not more than five hundred dollars, or imprisonment for not more than two months, or both; for a second offense, for imprisonment for not more than six months; and for a third or subsequent offense, for imprisonment for not more than one year. If the offender convicted of an offense referred to in this section is a corporation, the offender is liable for a first offense for a penalty of not more than five thousand dollars, and for a second or subsequent offense, for a penalty of not more than ten thousand dollars or for a forfeiture of its corporate license, or both.

NEW SECTION. **Sec. 804.** CONSUMING INTOXICATING HEMP IN PUBLIC PLACES. Except as permitted by this chapter, a person may not consume intoxicating hemp or intoxicating hemp products in a public place. A person who violates this section is guilty of a misdemeanor, and on conviction must be fined not more than one hundred dollars.

NEW SECTION. **Sec. 805.** UNLAWFUL SALE OF INTOXICATING OR MEDICINAL HEMP. A person who shall sell or offer for sale, or transport in any manner, any intoxicating or medicinal hemp or intoxicating or medicinal hemp products upon which the tax on production has not been paid is guilty of a gross misdemeanor and upon conviction thereof shall upon the person's first conviction be fined not more than five hundred dollars and confined in the county jail not more than six months, and upon a second and subsequent conviction shall be fined not more than one thousand dollars and confined in the county jail not more than one year.

The transport of a "personal use quantity" of intoxicating hemp upon which taxes need not be paid is an exception to this provision as long as the "personal use quantity" of intoxicating hemp is kept in the trunk of the vehicle or in some other area of the vehicle not normally occupied by the driver or passengers if the vehicle does not have a trunk. A utility compartment or glove compartment is deemed to be within the area occupied by the driver and passengers.

NEW SECTION. **Sec. 806.** ACTING WITHOUT LICENSE. A person doing an act required to be licensed under this chapter without having in force a license issued to the person is guilty of a gross misdemeanor.

NEW SECTION. **Sec. 807.** BUYING INTOXICATING OR MEDICINAL HEMP ILLEGALLY. If an unlicensed person buys intoxicating or medicinal hemp or intoxicating or medicinal products from a person other than the board, a state liquor store, a pharmacy, a drug store, a licensed intoxicating hemp establishment, or a person authorized by the board, the person is guilty of a misdemeanor.

NEW SECTION. **Sec. 808.** GENERAL PENALTIES. A person guilty of a violation of this title for which a penalty has not been specifically provided is liable, on conviction: For a first offense, for a penalty of not more than five hundred dollars, or for imprisonment for not more than two months, or both; for a second offense, for imprisonment for not more than six months; and for a third or subsequent offense, for imprisonment for not more than one year. If the offender convicted of

an offense referred to in this section is a corporation, the offender is liable for a first offense for a penalty of not more than five thousand dollars, and for a second or subsequent offense, for a penalty of not more than ten thousand dollars or for forfeiture of its corporate license, or both.

NEW SECTION. Sec. 809. JURISDICTION OF COURTS. Every district judge and municipal judge has concurrent jurisdiction with superior court judges for all violations of this chapter and may impose any punishment provided for the violations.

PART 9 - REVISIONS

Sec. 901. RCW 69.50.101 and 1996 c 178 s 18 are each amended to read as follows:

Unless the context clearly requires otherwise, definitions of terms shall be as indicated where used in this chapter:

(a) "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

(1) a practitioner authorized to prescribe (or, by the practitioner's authorized agent); or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseperson, or employee of the carrier or warehouseperson.

(c) "Board" means the state board of pharmacy.

(d) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or board rules **unless exempted in section 1001 of this act.**

(e)(1) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and:

(i) that has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; or

(ii) with respect to a particular individual, that the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II.

(2) The term does not include:

(i) a controlled substance;

(ii) a substance for which there is an approved new drug application;

(iii) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. Sec. 355, to the extent conduct with respect to the substance is pursuant to the exemption; or

(iv) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(f) "Deliver" or "delivery," means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

(g) "Department" means the department of health.

(h) "Dispense" means the interpretation of a prescription or order for a controlled substance and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(i) "Dispenser" means a practitioner who dispenses.

(j) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(k) "Distributor" means a person who distributes.

(l) "Drug" means (1) a controlled substance recognized as a drug in the official United States pharmacopoeia/national formulary or the official homeopathic pharmacopoeia of the United States, or any supplement to them; (2) controlled substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals; (3) controlled substances (other than food) intended to affect the structure or any function of the body of individuals or animals; and (4) controlled substances intended for use as a component of any article specified in (1), (2), or (3) of this subsection. The term does not include devices or their components, parts, or accessories.

(m) "Drug enforcement administration" means the drug enforcement administration in the United States Department of Justice, or its successor agency.

(n) "Immediate precursor" means a substance:

(1) that the state board of pharmacy has found to be and by rule designates as being the principal compound commonly used, or produced primarily for use, in the manufacture of a controlled substance;

(2) that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and

(3) the control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

(o) "Isomer" means an optical isomer, but in RCW 69.50.101(r)(5), 69.50.204(a) (12) and (34), and 69.50.206(a)(4), the term includes any geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c) the term includes any positional isomer; and in RCW 69.50.204(a)(35), 69.50.204(c), and 69.50.208(a) the term includes any positional or geometric isomer.

(p) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance:

(1) by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an

incident to, research, teaching, or chemical analysis and not for sale.

~~((q)) ("Marijuana" or "marihuana" means all parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.~~

~~—(r))~~ "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium, opium derivative, and any derivative of opium or opium derivative, including their salts, isomers, and salts of isomers, whenever the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium.

(2) Synthetic opiate and any derivative of synthetic opiate, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation.

(3) Poppy straw and concentrate of poppy straw.

(4) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives or ecgonine or their salts have been removed.

(5) Cocaine, or any salt, isomer, or salt of isomer thereof.

(6) Cocaine base.

(7) Ecgonine, or any derivative, salt, isomer, or salt of isomer thereof.

(8) Any compound, mixture, or preparation containing any quantity of any substance referred to in subparagraphs (1) through (7).

~~((s))~~ (r) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term includes opium, substances derived from opium (opium derivatives), and synthetic opiates. The term does not include, unless specifically designated as controlled under RCW 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes the racemic and levorotatory forms of dextromethorphan.

~~((t))~~ (s) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

~~((u))~~ (t) "Person" means individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

~~((v))~~ (u) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

~~((w))~~ (v) "Practitioner" means:

(1) A physician under chapter 18.71 RCW, a physician assistant under chapter 18.71A RCW, an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse, advanced registered nurse

practitioner, or licensed practical nurse under chapter 18.79 RCW, a pharmacist under chapter 18.64 RCW or a scientific investigator under this chapter, licensed, registered or otherwise permitted insofar as is consistent with those licensing laws to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of their professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(3) A physician licensed to practice medicine and surgery, a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, or a veterinarian licensed to practice veterinary medicine in any state of the United States.

((+x)) (w) "Prescription" means an order for controlled substances issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe controlled substances within the scope of his or her professional practice for a legitimate medical purpose.

((+y)) (x) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

((+z)) (y) "Secretary" means the secretary of health or the secretary's designee.

((+aa)) (z) "State," unless the context otherwise requires, means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

((+bb)) (aa) "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

Sec. 902. RCW 69.50.102 and 1981 c 48 s 1 are each amended to read as follows:

(a) As used in this chapter, "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. It includes, but is not limited to:

(1) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

(3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(4) Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances;

(5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

(6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;

(7) ~~((Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marihuana;~~

~~((8)))~~ (8) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;

~~((9)))~~ (9) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

~~((10)))~~ (10) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;

~~((11)))~~ (11) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;

~~((12)))~~ (12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing ~~((marihuana,))~~ cocaine ~~((, hashish, or hashish oil))~~ into the human body, such as:

(i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, ~~((hashish heads,))~~ or punctured metal bowls;

(ii) water pipes;

(iii) carburetion tubes and devices;

(iv) smoking and carburetion masks;

~~((v))~~ ~~((roach clips: Meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;~~

~~((vi)))~~ (vi) Miniature cocaine spoons, and cocaine vials;

~~((vii)))~~ (vii) chamber pipes;

~~((viii)))~~ (viii) carburetor pipes;

~~((ix)))~~ (ix) electric pipes;

~~((x)))~~ (x) air-driven pipes;

~~((xi)))~~ (xi) chillums;

~~((xii) Bongs;))~~ and

~~((xiii)))~~ (xiii) ice pipes or chillers.

(b) In determining whether an object is drug paraphernalia under this section, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use;

(2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;

(3) The proximity of the object, in time and space, to a direct violation of this chapter;

(4) The proximity of the object to controlled substances;

(5) The existence of any residue of controlled substances on the object;

(6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an

owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended or designed for use as drug paraphernalia;

(7) Instructions, oral or written, provided with the object concerning its use;

(8) Descriptive materials accompanying the object which explain or depict its use;

(9) National and local advertising concerning its use;

(10) The manner in which the object is displayed for sale;

(11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco or hemp products;

(12) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;

(13) The existence and scope of legitimate uses for the object in the community; and

(14) Expert testimony concerning its use.

Sec. 903. RCW 69.50.201 and 1993 c 187 s 2 are each amended to read as follows:

(a) The state board of pharmacy shall enforce this chapter and may add substances to or delete or reschedule substances listed in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, or 69.50.212 pursuant to the procedures of chapter 34.05 RCW.

(1) In making a determination regarding a substance, the board shall consider the following:

(i) the actual or relative potential for abuse;

(ii) the scientific evidence of its pharmacological effect, if known;

(iii) the state of current scientific knowledge regarding the substance;

(iv) the history and current pattern of abuse;

(v) the scope, duration, and significance of abuse;

(vi) the risk to the public health;

(vii) the potential of the substance to produce psychic or physiological dependence liability; and

(viii) whether the substance is an immediate precursor of a controlled substance.

(2) The board may consider findings of the federal Food and Drug Administration or the Drug Enforcement Administration as prima facie evidence relating to one or more of the determinative factors.

(b) On or before December 1 of each year, the board shall inform the committees of reference of the legislature of the controlled substances added, deleted, or changed on the schedules specified in this chapter and which includes an explanation of these actions.

(c) After considering the factors enumerated in subsection (a) of this section, the board shall make findings with respect thereto and adopt and cause to be published a rule controlling the substance upon finding the substance has a potential for abuse.

(d) The board, without regard to the findings required by subsection (a) of this section or RCW 69.50.203, 69.50.205, 69.50.207, 69.50.209, and 69.50.211 or the procedures prescribed by subsections (a) and (c) of this section, may place an immediate precursor in the same schedule in which the controlled substance of which it is an immediate precursor is placed or in any other schedule. If the board designates a substance as an immediate

precursor, substances that are precursors of the controlled precursor are not subject to control solely because they are precursors of the controlled precursor.

(e) If a substance is designated, rescheduled, or deleted as a controlled substance under federal law, the board shall similarly control the substance under this chapter after the expiration of thirty days from the date of publication in the federal register of a final order designating the substance as a controlled substance or rescheduling or deleting the substance or from the date of issuance of an order of temporary scheduling under Section 508 of the federal Dangerous Drug Diversion Control Act of 1984, 21 U.S.C. Sec. 811(h), unless within that thirty-day period, the board or an interested party objects to inclusion, rescheduling, temporary scheduling, or deletion. If no objection is made, the board shall adopt and cause to be published, without the necessity of making determinations or findings as required by subsection (a) of this section or RCW 69.50.203, 69.50.205, 69.50.207, 69.50.209, and 69.50.211, a final rule, for which notice of proposed rule making is omitted, designating, rescheduling, temporarily scheduling, or deleting the substance. If an objection is made, the board shall make a determination with respect to the designation, rescheduling, or deletion of the substance as provided by subsection (a) of this section. Upon receipt of an objection to inclusion, rescheduling, or deletion under this chapter by the board, the board shall publish notice of the receipt of the objection, and control under this chapter is stayed until the board adopts a rule as provided by subsection (a) of this section.

(f) The board, by rule and without regard to the requirements of subsection (a) of this section, may schedule a substance in Schedule I regardless of whether the substance is substantially similar to a controlled substance in Schedule I or II if the board finds that scheduling of the substance on an emergency basis is necessary to avoid an imminent hazard to the public safety and the substance is not included in any other schedule or no exemption or approval is in effect for the substance under Section 505 of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 355. Upon receipt of notice under RCW 69.50.214, the board shall initiate scheduling of the controlled substance analog on an emergency basis pursuant to this subsection. The scheduling of a substance under this subsection expires one year after the adoption of the scheduling rule. With respect to the finding of an imminent hazard to the public safety, the board shall consider whether the substance has been scheduled on a temporary basis under federal law or factors set forth in subsection (a)(1) (iv), (v), and (vi) of this section, and may also consider clandestine importation, manufacture, or distribution, and, if available, information concerning the other factors set forth in subsection (a)(1) of this section. A rule may not be adopted under this subsection until the board initiates a rule-making proceeding under subsection (a) of this section with respect to the substance. A rule adopted under this subsection must be vacated upon the conclusion of the rule-making proceeding initiated under subsection (a) of this section with respect to the substance.

(g) Authority to control under this section does not extend to distilled spirits, wine, malt beverages, hemp (commonly referred to as "marijuana") as defined in section 101 of this act. or tobacco as those terms are defined or used in Titles 66 and 26 RCW.

Sec. 904. RCW 69.50.204 and 1993 c 187 s 4 are each amended to read as follows:

Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in Schedule I:

(a) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);

(2) Acetylmethadol;

(3) Allylprodine;

(4) Alphacetylmethadol;

(5) Alphameprodine;

(6) Alphamethadol;

(7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenylethyl)-4-piperidyl] propionanilide); (1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

(8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);

(9) Benzethidine;

(10) Betacetylmethadol;

(11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);

(12) Beta-hydroxy-3-methylfentanyl some trade or other names: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide;

(13) Betameprodine;

(14) Betamethadol;

(15) Betaprodine;

(16) Clonitazene;

(17) Dextromoramide;

(18) Diampromide;

(19) Diethylthiambutene;

(20) Difenoxin;

(21) Dimenoxadol;

(22) Dimepheptanol;

(23) Dimethylthiambutene;

(24) Dioxaphetyl butyrate;

(25) Dipipanone;

(26) Ethylmethylthiambutene;

(27) Etonitazene;

(28) Etoxeridine;

(29) Furethidine;

(30) Hydroxypethidine;

(31) Ketobemidone;

(32) Levomoramide;

(33) Levophenacetylmorphan;

(34) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);

(35) 3-Methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl)-4-piperidinyl]-N-phenylpropanamide);

(36) Morpheridine;

(37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

(38) Noracetylmethadol;

(39) Norlevorphanol;

(40) Normethadone;

(41) Norpipanone;

(42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);
(43) PEPAP(1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);
(44) Phenadoxone;
(45) Phenampromide;
(46) Phenomorphan;
(47) Phenoperidine;
(48) Piritramide;
(49) Proheptazine;
(50) Properidine;
(51) Propiram;
(52) Racemoramide;
(53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);
(54) Tilidine;
(55) Trimeperidine.

(b) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;
(2) Acetyldihydrocodeine;
(3) Benzylmorphine;
(4) Codeine methylbromide;
(5) Codeine-N-Oxide;
(6) Cyprenorphine;
(7) Desomorphine;
(8) 3,4-methylenedioxy-N-ethylamphetamine some trade or other names: N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA;

(9) N-hydroxy-3,4-methylenedioxyamphetamine some trade or other names: N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine, and N-hydroxy MDA;

(10) Dihydromorphine;
(11) Drotebanol;
(12) Etorphine, except hydrochloride salt;
(13) Heroin;
(14) Hydromorphanol;
(15) Methyldesorphine;
(16) Methyldihydromorphine;
(17) Morphine methylbromide;
(18) Morphine methylsulfonate;
(19) Morphine-N-Oxide;
(20) Myrophine;
(21) Nicocodeine;
(22) Nicomorphine;
(23) Normorphine;
(24) Pholcodine;
(25) Thebacon.

(c) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation.

(1) 4-bromo-2,5-dimethoxy-amphetamine: Some trade or other names: 4-bromo-2,5-dimethoxy-a-methylphenethylamine; 4-bromo-2,5-DMA;

(2) 2,5-dimethoxyamphetamine: Some trade or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA;

(3) 4-methoxyamphetamine: Some trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine, PMA;

(4) 5-methoxy-3,4-methylenedioxy-amphetamine;

(5) 4-methyl-2,5-dimethoxy-amphetamine: Some trade and other names: 4-methyl-2,5-dimethoxy-a-methylphenethylamine; "DOM"; and "STP";

(6) 3,4-methylenedioxy amphetamine;

(7) 3,4-methylenedioxymethamphetamine (MDMA);

(8) 3,4,5-trimethoxy amphetamine;

(9) Bufotenine: Some trade or other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine;

(10) Diethyltryptamine: Some trade or other names: N,N-Diethyltryptamine; DET;

(11) Dimethyltryptamine: Some trade or other names: DMT;

(12) Ibogaine: Some trade or other names: 7-Ethyl-6,6 beta,7,8,9,10,12,13,-octahydro-2-methoxy-6,9-methano-5H-pyndo (1',2' 1,2) azepino (5,4-b) indole; Tabernanthe iboga;

(13) Lysergic acid diethylamide;

(14) ~~((Marihuana or marijuana;~~

~~_____~~(15)) Mescaline;

~~((+16))~~ (15) Parahexyl-7374: Some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo[b,d]pyran; synhexyl;

~~((+17))~~ (16) Peyote, meaning all parts of the plant presently classified botanically as Lophophora Williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds, or extracts; (interprets 21 U.S.C. Sec. 812 (c), Schedule I (c)(12));

~~((+18))~~ (17) N-ethyl-3-piperidyl benzilate;

~~((+19))~~ (18) N-methyl-3-piperidyl benzilate;

~~((+20))~~ (19) Psilocybin;

~~((+21))~~ (20) Psilocyn;

~~((+22))~~ Tetrahydrocannabinols, synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, species, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

~~_____~~(i) Delta 1 — cis — or trans tetrahydrocannabinol, and their optical isomers, excluding tetrahydrocannabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the United States Food and Drug Administration;

~~_____~~(ii) Delta 6 — cis — or trans tetrahydrocannabinol, and their optical isomers;

~~_____~~(iii) Delta 3,4 — cis — or trans tetrahydrocannabinol, and its optical isomers;

~~(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)~~

~~_____~~(23)) (21) Ethylamine analog of phencyclidine: Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-

phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl)ethylamine;
cyclohexamine; PCE;

((24)) (22) Pyrrolidine analog of phencyclidine: Some
trade or other names: 1-(1-phenylcyclohexyl)pyrrolidine; PCPy; PHP;

((25)) (23) Thiophene analog of phencyclidine: Some
trade or other names: 1-(1-[2-thienyl]-cyclohexyl)-piperidine; 2-
thienylanalog of phencyclidine; TCPy; TCP;

((26)) (24) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine: A
trade or other name is TCPy.

(d) Depressants. Unless specifically excepted or unless
listed in another schedule, any material, compound, mixture, or
preparation which contains any quantity of the following substances
having a depressant effect on the central nervous system, including
its salts, isomers, and salts of isomers whenever the existence of
such salts, isomers, and salts of isomers is possible within the
specific chemical designation.

(1) Mecloqualone;

(2) Methaqualone.

(e) Stimulants. Unless specifically excepted or unless
listed in another schedule, any material, compound, mixture, or
preparation which contains any quantity of the following substances
having a stimulant effect on the central nervous system, including
its salts, isomers, and salts of isomers:

(1) Fenethylline;

(2) (+-)cis-4-methylaminorex ((+)-cis-4,5-dihydro-4-
methyl-5-phenyl-2-oxazoline);

(3) N-ethylamphetamine;

(4) N,N-dimethylamphetamine: Some trade or other names:
N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-
trimethylphenoethylene.

The controlled substances in this section may be rescheduled or
deleted as provided for in RCW 69.50.201.

Sec. 905. RCW 69.50.206 and 1993 c 187 s 6 are each amended to
read as follows:

(a) The drugs and other substances listed in this section,
by whatever official name, common or usual name, chemical name, or
brand name designated, are included in Schedule II.

(b) Substances. (Vegetable origin or chemical synthesis.)
Unless specifically excepted, any of the following substances, except
those listed in other schedules, whether produced directly or
indirectly by extraction from substances of vegetable origin, or
independently by means of chemical synthesis, or by combination of
extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative,
or preparation of opium or opiate, excluding apomorphine,
dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone, and
their respective salts, but including the following:

(i) Raw opium;

(ii) Opium extracts;

(iii) Opium fluid;

(iv) Powdered opium;

(v) Granulated opium;

(vi) Tincture of opium;

(vii) Codeine;

(viii) Ethylmorphine;

(ix) Etorphine hydrochloride;

(x) Hydrocodone;

(xi) Hydromorphone;

- (xii) Metopon;
- (xiii) Morphine;
- (xiv) Oxycodone;
- (xv) Oxymorphone; and
- (xvi) Thebaine.

(2) Any salt, compound, isomer, derivative, or preparation thereof that is chemically equivalent or identical with any of the substances referred to in subsection (b)(1) of this section, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves including cocaine and ecgonine, and their salts, isomers, derivatives, and salts of isomers and derivatives, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(5) Methylbenzoylecgonine (cocaine - its salts, optical isomers, and salts of optical isomers).

(6) Concentrate of poppy straw (The crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.)

(c) Opiates. Unless specifically excepted or unless in another schedule, any of the following synthetic opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

- (1) Alfentanil;
- (2) Alphaprodine;
- (3) Anileridine;
- (4) Bezitramide;
- (5) Bulk dextropropoxyphene (nondosage forms);
- (6) Carfentanil;
- (7) Dihydrocodeine;
- (8) Diphenoxylate;
- (9) Fentanyl;
- (10) Isomethadone;
- (11) Levomethorphan;
- (12) Levorphanol;
- (13) Metazocine;
- (14) Methadone;
- (15) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (16) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
- (17) Pethidine (meperidine);
- (18) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (19) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (20) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (21) Phenazocine;
- (22) Piminodine;
- (23) Racemethorphan;
- (24) Racemorphan;
- (25) Sufentanil.

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) Methamphetamine, its salts, isomers, and salts of its isomers;

(3) Phenmetrazine and its salts;

(4) Methylphenidate.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital;

(2) Glutethimide;

(3) Pentobarbital;

(4) Phencyclidine;

(5) Secobarbital.

(f) Hallucinogenic substances.

~~((1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved drug product. (Some other names for dronabinol [6aR trans]-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol.)~~

~~(2)) Nabilone: Some trade or other names are (æ)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzol[b,d]pyran-9-one.~~

(g) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine:

(i) Phenylacetone: Some trade or other names phenyl-2-propanone, P2P, benzyl methyl ketone, methyl benzyl ketone.

(2) Immediate precursors to phencyclidine (PCP):

(i) 1-phenylcyclohexylamine;

(ii) 1-piperidinocyclohexanecarbonitrile (PCC).

The controlled substances in this section may be rescheduled or deleted as provided for in RCW 69.50.201.

Sec. 906. RCW 69.50.401 and 1996 c 205 s 2 are each amended to read as follows:

(a) Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

(1) Any person who violates this subsection with respect to:

(i) a controlled substance classified in Schedule I or II which is a narcotic drug, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, or (A) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (B) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms

and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine;

(ii) methamphetamine, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, or (A) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (B) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine;

(iii) any other controlled substance classified in Schedule I, II, or III, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iv) a substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(v) a substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(b) Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess a counterfeit substance.

(1) Any person who violates this subsection with respect to:

(i) a counterfeit substance classified in Schedule I or II which is a narcotic drug, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both;

(ii) a counterfeit substance which is methamphetamine, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both;

(iii) any other counterfeit substance classified in Schedule I, II, or III, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iv) a counterfeit substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(v) a counterfeit substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(c) It is unlawful, except as authorized in this chapter and chapter 69.41 RCW, for any person to offer, arrange, or negotiate for the sale, gift, delivery, dispensing, distribution, or administration of a controlled substance to any person and then sell, give, deliver, dispense, distribute, or administer to that person any other liquid, substance, or material in lieu of such controlled substance. Any person who violates this subsection is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(d) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a crime, and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both (~~(, except as provided for in subsection (e) of this section)~~).

~~(e) ((Except as provided for in subsection (a)(1) (iii) of this section any person found guilty of possession of forty grams or less of marihuana shall be guilty of a misdemeanor.~~

~~—(f))~~ It is unlawful to compensate, threaten, solicit, or in any other manner involve a person under the age of eighteen years in a transaction unlawfully to manufacture, sell, or deliver a controlled substance. A violation of this subsection shall be punished as a class C felony punishable in accordance with RCW 9A.20.021.

This section shall not apply to offenses defined and punishable under the provisions of RCW 69.50.410.

Sec. 907. RCW 69.50.408 and 1989 c 8 s 3 are each amended to read as follows:

(a) Any person convicted of a second or subsequent offense under this chapter may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

(b) For purposes of this section, an offense is considered a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this chapter or under any statute of the United States or of any state relating to narcotic drugs, ~~((marihuana,))~~ depressant, stimulant, or hallucinogenic drugs.

(c) This section does not apply to offenses under RCW 69.50.401(d).

Sec. 908. RCW 69.50.410 and 1975-'76 2nd ex.s. c 103 s 1 are each amended to read as follows:

(1) Except as authorized by this chapter it shall be unlawful for any person to sell for profit any controlled substance or counterfeit substance classified in Schedule I, RCW 69.50.204(~~(except leaves and flowering tops of marihuana))~~).

For the purposes of this section only, the following words and phrases shall have the following meanings:

(a) "To sell" means the passing of title and possession of a controlled substance from the seller to the buyer for a price whether or not the price is paid immediately or at a future date.

(b) "For profit" means the obtaining of anything of value in exchange for a controlled substance.

(c) "Price" means anything of value.

(2) Any person convicted of a violation of subsection (1) of this section shall receive a sentence of not more than five years in a correctional facility of the department of social and health services for the first offense. Any person convicted on a second or subsequent cause, the sale having transpired after prosecution and conviction on the first cause, of subsection (1) of this section shall receive a mandatory sentence of five years in a correctional facility of the department of social and health services and no judge of any court shall suspend or defer the sentence imposed for the second or subsequent violation of subsection (1) of this section.

(3) Any person convicted of a violation of subsection (1) of this section by selling heroin shall receive a mandatory sentence of two years in a correctional facility of the department of social and health services and no judge of any court shall suspend or defer the sentence imposed for such violation. Any person convicted on a second or subsequent sale of heroin, the sale having transpired after prosecution and conviction on the first cause of the sale of heroin shall receive a mandatory sentence of ten years in a correctional facility of the department of social and health services and no judge

of any court shall suspend or defer the sentence imposed for this second or subsequent violation: PROVIDED, That the indeterminate sentence review board (~~(of prison terms and paroles)~~) under RCW 9.95.040 shall not reduce the minimum term imposed for a violation under this subsection.

(4) In addition to the sentences provided in subsection (2) of this section, any person convicted of a violation of subsection (1) of this section shall be fined in an amount calculated to at least eliminate any and all proceeds or profits directly or indirectly gained by such person as a result of sales of controlled substances in violation of the laws of this or other states, or the United States, up to the amount of five hundred thousand dollars on each count.

(5) Any person, addicted to the use of controlled substances, who voluntarily applies to the department of social and health services for the purpose of participating in a rehabilitation program approved by the department for addicts of controlled substances shall be immune from prosecution for subsection (1) offenses unless a filing of an information or indictment against such person for a violation of subsection (1) of this section is made prior to his voluntary participation in the program of the department of social and health services. All applications for immunity under this section shall be sent to the department of social and health services in Olympia. It shall be the duty of the department to stamp each application received pursuant to this section with the date and time of receipt.

This section shall not apply to offenses defined and punishable under the provisions of RCW 69.50.401 as now or hereafter amended.

Sec. 909. RCW 69.50.414 and 1986 c 124 s 10 are each amended to read as follows:

The parent or legal guardian of any minor to whom a controlled substance, as defined in RCW 69.50.101, is sold or transferred, shall have a cause of action against the person who sold or transferred the controlled substance for all damages to the minor or his or her parent or legal guardian caused by such sale or transfer. Damages shall include: (a) Actual damages, including the cost for treatment or rehabilitation of the minor child's drug dependency, (b) forfeiture to the parent or legal guardian of the cash value of any proceeds received from such sale or transfer of a controlled substance, and (c) reasonable attorney fees.

This section shall not apply to a practitioner, as defined in RCW 69.50.101(~~(+t)~~) (v), who sells or transfers a controlled substance to a minor pursuant to a valid prescription or order.

Sec. 910. RCW 69.50.435 and 1996 c 14 s 2 are each amended to read as follows:

(a) Any person who violates RCW 69.50.401(a) by manufacturing, selling, delivering, or possessing with the intent to manufacture, sell, or deliver a controlled substance listed under that subsection or who violates RCW 69.50.410 by selling for profit any controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204, (~~(except leaves and flowering tops of marijuana)~~) to a person:

- (1) In a school;
- (2) On a school bus;
- (3) Within one thousand feet of a school bus route stop designated by the school district;

(4) Within one thousand feet of the perimeter of the school grounds;

(5) In a public park;

(6) On a public transit vehicle;

(7) In a public transit stop shelter;

(8) At a civic center designated as a drug-free zone by the local governing authority; or

(9) Within one thousand feet of the perimeter of a facility designated under (8) of this subsection, if the local governing authority specifically designates the one thousand foot perimeter may be punished by a fine of up to twice the fine otherwise authorized by this chapter, but not including twice the fine authorized by RCW 69.50.406, or by imprisonment of up to twice the imprisonment otherwise authorized by this chapter, but not including twice the imprisonment authorized by RCW 69.50.406, or by both such fine and imprisonment. The provisions of this section shall not operate to more than double the fine or imprisonment otherwise authorized by this chapter for an offense.

(b) It is not a defense to a prosecution for a violation of this section that the person was unaware that the prohibited conduct took place while in a school or school bus or within one thousand feet of the school or school bus route stop, in a public park, on a public transit vehicle, in a public transit stop shelter, at a civic center designated as a drug-free zone by the local governing authority, or within one thousand feet of the perimeter of a facility designated under subsection (a)(8) of this section, if the local governing authority specifically designates the one thousand foot perimeter.

(c) It is not a defense to a prosecution for a violation of this section or any other prosecution under this chapter that persons under the age of eighteen were not present in the school, the school bus, the public park, or the public transit vehicle, or at the school bus route stop, the public transit vehicle stop shelter, at a civic center designated as a drug-free zone by the local governing authority, or within one thousand feet of the perimeter of a facility designated under subsection (a)(8) of this section, if the local governing authority specifically designates the one thousand foot perimeter at the time of the offense or that school was not in session.

(d) It is an affirmative defense to a prosecution for a violation of this section that the prohibited conduct took place entirely within a private residence, that no person under eighteen years of age or younger was present in such private residence at any time during the commission of the offense, and that the prohibited conduct did not involve delivering, manufacturing, selling, or possessing with the intent to manufacture, sell, or deliver any controlled substance in RCW 69.50.401(a) for profit. The affirmative defense established in this section shall be proved by the defendant by a preponderance of the evidence. This section shall not be construed to establish an affirmative defense with respect to a prosecution for an offense defined in any other section of this chapter.

(e) In a prosecution under this section, a map produced or reproduced by any municipal, school district, county, or transit authority engineer for the purpose of depicting the location and boundaries of the area on or within one thousand feet of any property used for a school, school bus route stop, public park, public transit vehicle stop shelter, or a civic center designated as a drug-free zone by a local governing authority, or a true copy of such a map, shall under proper authentication, be admissible and shall constitute prima facie evidence of the location and boundaries of those areas if

the governing body of the municipality, school district, county, or transit authority has adopted a resolution or ordinance approving the map as the official location and record of the location and boundaries of the area on or within one thousand feet of the school, school bus route stop, public park, public transit vehicle stop shelter, or civic center designated as a drug-free zone by a local governing authority. Any map approved under this section or a true copy of the map shall be filed with the clerk of the municipality or county, and shall be maintained as an official record of the municipality or county. This section shall not be construed as precluding the prosecution from introducing or relying upon any other evidence or testimony to establish any element of the offense. This section shall not be construed as precluding the use or admissibility of any map or diagram other than the one which has been approved by the governing body of a municipality, school district, county, or transit authority if the map or diagram is otherwise admissible under court rule.

(f) As used in this section the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "School" has the meaning under RCW 28A.150.010 or 28A.150.020. The term "school" also includes a private school approved under RCW 28A.195.010;

(2) "School bus" means a school bus as defined by the superintendent of public instruction by rule which is owned and operated by any school district and all school buses which are privately owned and operated under contract or otherwise with any school district in the state for the transportation of students. The term does not include buses operated by common carriers in the urban transportation of students such as transportation of students through a municipal transportation system;

(3) "School bus route stop" means a school bus stop as designated on maps submitted by school districts to the office of the superintendent of public instruction;

(4) "Public park" means land, including any facilities or improvements on the land, that is operated as a park by the state or a local government;

(5) "Public transit vehicle" means any motor vehicle, street car, train, trolley vehicle, or any other device, vessel, or vehicle which is owned or operated by a transit authority and which is used for the purpose of carrying passengers on a regular schedule;

(6) "Transit authority" means a city, county, or state transportation system, transportation authority, public transportation benefit area, public transit authority, or metropolitan municipal corporation within the state that operates public transit vehicles;

(7) "Stop shelter" means a passenger shelter designated by a transit authority;

(8) "Civic center" means a publicly owned or publicly operated place or facility used for recreational, educational, or cultural activities.

Sec. 911. RCW 69.50.505 and 1993 c 487 s 1 are each amended to read as follows:

(a) The following are subject to seizure and forfeiture and no property right exists in them:

(1) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or chapter 69.41 or 69.52 RCW, and all

hazardous chemicals, as defined in RCW 64.44.010, used or intended to be used in the manufacture of controlled substances;

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW;

(3) All property which is used, or intended for use, as a container for property described in paragraphs (1) or (2);

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate the sale, delivery, or receipt of property described in paragraphs (1) or (2), except that:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or chapter 69.41 or 69.52 RCW;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

~~(iii) ((No conveyance is subject to forfeiture under this section if used in the receipt of only an amount of marijuana for which possession constitutes a misdemeanor under RCW 69.50.401(e);~~

~~_____ (iv)))~~ A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

~~((v)))~~ (iv) When the owner of a conveyance has been arrested under this chapter or chapter 69.41 or 69.52 RCW the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;

(5) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter or chapter 69.41 or 69.52 RCW;

(6) All drug paraphernalia;

(7) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter or chapter 69.41 or 69.52 RCW. A forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission. No personal property may be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission which that owner establishes was committed or omitted without the owner's knowledge or consent; and

(8) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any

appurtenances or improvements which are being used with the knowledge of the owner for the manufacturing, compounding, processing, delivery, importing, or exporting of any controlled substance, or which have been acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, if such activity is not less than a class C felony and a substantial nexus exists between the commercial production or sale of the controlled substance and the real property. However:

(i) No property may be forfeited pursuant to this subsection, to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent;

(ii) The bona fide gift of a controlled substance, legend drug, or imitation controlled substance shall not result in the forfeiture of real property;

~~(iii) ((The possession of marijuana shall not result in the forfeiture of real property unless the marijuana is possessed for commercial purposes, the amount possessed is five or more plants or one pound or more of marijuana, and a substantial nexus exists between the possession of marijuana and the real property. In such a case, the intent of the offender shall be determined by the preponderance of the evidence, including the offender's prior criminal history, the amount of marijuana possessed by the offender, the sophistication of the activity or equipment used by the offender, and other evidence which demonstrates the offender's intent to engage in commercial activity;~~

~~_____ (iv)))~~ The unlawful sale of ~~((marijuana or))~~ a legend drug shall not result in the forfeiture of real property unless the sale was ~~((forty grams or more in the case of marijuana or))~~ one hundred dollars or more ~~((in the case of a legend drug,))~~ and a substantial nexus exists between the unlawful sale and the real property; and

~~((+v)))~~ (iv) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, at the time the security interest was created, neither had knowledge of nor consented to the act or omission.

(b) Real or personal property subject to forfeiture under this chapter may be seized by any board inspector or law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of real property shall include the filing of a lis pendens by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later: PROVIDED, That real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(3) A board inspector or law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The board inspector or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(c) In the event of seizure pursuant to subsection (b), proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9 RCW, or a certificate of title, shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(d) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (a)(4), (a)(7), or (a)(8) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the item seized shall be deemed forfeited. The community property interest in real property of a person whose spouse committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(e) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession.

The court to which the matter is to be removed shall be the district court when the aggregate value of personal property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorney's fees. In cases involving personal property, the burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the property. In cases involving real property, the burden of producing evidence shall be upon the law enforcement agency. The burden of proof that the seized real property is subject to forfeiture shall be upon the law enforcement agency. The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) of this section.

(f) When property is forfeited under this chapter the board or seizing law enforcement agency may:

(1) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the provisions of this chapter;

(2) Sell that which is not required to be destroyed by law and which is not harmful to the public;

(3) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law; or

(4) Forward it to the drug enforcement administration for disposition.

(g)(1) When property is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the property, the disposition of the property, the value of the property at the time of seizure, and the amount of proceeds realized from disposition of the property.

(2) Each seizing agency shall retain records of forfeited property for at least seven years.

(3) Each seizing agency shall file a report including a copy of the records of forfeited property with the state treasurer each calendar quarter.

(4) The quarterly report need not include a record of forfeited property that is still being held for use as evidence during the investigation or prosecution of a case or during the appeal from a conviction.

(h)(1) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the violence reduction and drug enforcement (~~(and education)~~) account under RCW 69.50.520.

(2) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents, and the cost of any

valid landlord's claim for damages under subsection (n) of this section.

(3) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(i) Forfeited property and net proceeds not required to be paid to the state treasurer shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of controlled substances related law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources.

(j) Controlled substances listed in Schedule I, II, III, IV, and V that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, II, III, IV, and V, which are seized or come into the possession of the board, the owners of which are unknown, are contraband and shall be summarily forfeited to the board.

(k) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the board.

(l) The failure, upon demand by a board inspector or law enforcement officer, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration or proof that he is the holder thereof constitutes authority for the seizure and forfeiture of the plants.

(m) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. Orders for the forfeiture of real property shall be entered by the superior court, subject to court rules. Such an order shall be filed by the seizing agency in the county auditor's records in the county in which the real property is located.

(n) A landlord may assert a claim against proceeds from the sale of assets seized and forfeited under subsection (f)(2) of this section, only if:

(1) A law enforcement officer, while acting in his or her official capacity, directly caused damage to the complaining landlord's property while executing a search of a tenant's residence; and

(2) The landlord has applied any funds remaining in the tenant's deposit, to which the landlord has a right under chapter 59.18 RCW, to cover the damage directly caused by a law enforcement officer prior to asserting a claim under the provisions of this section;

(i) Only if the funds applied under (2) of this subsection are insufficient to satisfy the damage directly caused by a law enforcement officer, may the landlord seek compensation for the damage by filing a claim against the governmental entity under whose

authority the law enforcement agency operates within thirty days after the search;

(ii) Only if the governmental entity denies or fails to respond to the landlord's claim within sixty days of the date of filing, may the landlord collect damages under this subsection by filing within thirty days of denial or the expiration of the sixty-day period, whichever occurs first, a claim with the seizing law enforcement agency. The seizing law enforcement agency must notify the landlord of the status of the claim by the end of the thirty-day period. Nothing in this section requires the claim to be paid by the end of the sixty-day or thirty-day period.

(3) For any claim filed under (2) of this subsection, the law enforcement agency shall pay the claim unless the agency provides substantial proof that the landlord either:

(i) Knew or consented to actions of the tenant in violation of this chapter or chapter 69.41 or 69.52 RCW; or

(ii) Failed to respond to a notification of the illegal activity, provided by a law enforcement agency under RCW 59.18.075, within seven days of receipt of notification of the illegal activity.

(o) The landlord's claim for damages under subsection (n) of this section may not include a claim for loss of business and is limited to:

(1) Damage to tangible property and clean-up costs;

(2) The lesser of the cost of repair or fair market value of the damage directly caused by a law enforcement officer;

(3) The proceeds from the sale of the specific tenant's property seized and forfeited under subsection (f)(2) of this section; and

(4) The proceeds available after the seizing law enforcement agency satisfies any bona fide security interest in the tenant's property and costs related to sale of the tenant's property as provided by subsection (h)(2) of this section.

(p) Subsections (n) and (o) of this section do not limit any other rights a landlord may have against a tenant to collect for damages. However, if a law enforcement agency satisfies a landlord's claim under subsection (n) of this section, the rights the landlord has against the tenant for damages directly caused by a law enforcement officer under the terms of the landlord and tenant's contract are subrogated to the law enforcement agency.

Sec. 912. RCW 69.52.030 and 1983 1st ex.s. c 4 s 5 are each amended to read as follows:

(1) It is unlawful for any person to manufacture, distribute, or possess with intent to distribute, an imitation controlled substance. Any person who violates this subsection shall, upon conviction, be guilty of a class C felony.

(2) Any person eighteen years of age or over who violates subsection (1) of this section by distributing an imitation controlled substance to a person under eighteen years of age is guilty of a class B felony.

(3) It is unlawful for any person to cause to be placed in any newspaper, magazine, handbill, or other publication, or to post or distribute in any public place, any advertisement or solicitation offering for sale imitation controlled substances. Any person who violates this subsection is guilty of a class C felony.

(4) No civil or criminal liability shall be imposed by virtue of this chapter on any person registered under the Uniform Controlled Substances Act pursuant to RCW 69.50.301 or 69.50.303 who manufactures, distributes, or possesses an imitation controlled

substance for use as a placebo or other use by a registered practitioner, as defined in RCW 69.50.101(~~(t)~~) (v), in the course of professional practice or research.

(5) No prosecution under this chapter shall be dismissed solely by reason of the fact that the dosage units were contained in a bottle or other container with a label accurately describing the ingredients of the imitation controlled substance dosage units. The good faith of the defendant shall be an issue of fact for the trier of fact.

PART 10--HEMP EXEMPTION

NEW SECTION. **Sec. 1001.** HEMP EXEMPTION. This act means that "hemp" as defined in section 101 of this act, is not a "controlled substance," as defined in chapter 69.50 RCW. The regulation of hemp is defined by this chapter.

PART 11--CONSTRUCTION

NEW SECTION. **Sec. 1101.** INTENT. No provision of this act may be executed in a manner that violates the intent of this act to end hemp prohibition in Washington state.

NEW SECTION. **Sec. 1102.** SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 1103.** PART HEADINGS AND CAPTIONS NOT LAW. Part headings and captions used in this act do not constitute any part of the law.

NEW SECTION. **Sec. 1104.** CODIFICATION. Sections 101 through 809, 1001, and 1101 through 1103, of this act constitute a new chapter in Title 66 RCW.

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